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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/578,156

05/23/2000

Lundy Lewis

APB-019

4279

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01/26/2006

LAHIVE & COCKFIELD, LLP.
28 STATE STREET
BOSTON, MA 02109

EXAMINER

SWEARINGEN, JEFFREY R

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 01/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/578,156

Applicant(s)

LEWIS, LUNDY

Examiner

Jeffrey R. Swearingen

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 8-18 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-18 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 November 2005 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 6, 8, 11, 13-14, 18, 20-23, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The terms "a desired state" and "when the current state of the service is undesirable" in claims 1, 8, 11, 14, 20, and 23 are relative terms which render the claims indefinite. The terms "desirable" and "undesirable" are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant failed to state what is meant by a "desirable state" and an "undesirable state".

5. The term "relative to the respective aspect of operation" in claims 1, 6, 13, 18, 21, 22, 23, and 26 is a relative term which renders the claims indefinite. The term "relative to the respective aspect of operation" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Applicant failed to state what determines if something is "relative" to an aspect of operation and what is meant if something is "relative" to an aspect of operation.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 8-18, and 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitney (U.S. Patent No. 5,646,864).

8. In regard to claims 1, 6, 11, 13, 18, 21, 22, 23, and 26, Whitney disclosed a *plurality of network components, and wherein a service operates on a subset of the plurality of network components, the service having a state, the system comprising: multiple monitoring agents to each monitor a respective aspect of operation of the network, wherein each monitoring agent detects one or more events relative to the respective aspect of operation and generates an alarm as a function of the one or more detected events (column 3, lines 11-20; column 3, lines 34-36; column 4, lines 1-9); and an alarm correlation agent that receives alarms from the monitoring agents, that determines a current state of the service based on alarms originating from the subset of the plurality of network components and (column 3, lines 32-46; column 4, lines 1-6), that issues one or more instructions to establish a desired state of the service when the current state of the service is unavailable. (column 7, lines 34-41)*

9. In regard to claims 2, 9, 15, and 24, Whitney further disclosed *the monitoring agents comprise at least one of: an infrastructure monitoring agent to monitor operation of the network infrastructure; a computer system monitoring agent to monitor operation of at least one computer system on the network; a network traffic monitoring agent to monitor traffic on the network; an application monitoring agent to monitor operation of at least one application operating on the network; a trouble-ticketing agent to receive reports of problems by users with respect to operation of the network; a response time monitoring agent to monitor a response time of a communication on the network; a device monitoring agent to monitor operation of a device on the network; and a multicomponent monitoring agent comprising an aggregate of any of the above monitoring agents. (column 3, lines 32-36)*

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10. In regard to claim 3, Whitney further disclosed *the monitoring agents and alarm correlation agents comprise reasoning agents*. (column 3, lines 32-46)

11. In regard to claims 4, 10, 12, 16, 17, and 25, Whitney further disclosed the agents comprise one or more of: *a rule-based reasoning agent; a model-based reasoning agent; a state-transition graph based reasoning agent; a code book based reasoning agent; and a case-based reasoning agent*. (column 3, lines 11-15)

12. In regard to claim 5, Whitney further disclosed *an alarm repository to receive the one or more alarms from the monitoring agent, wherein the alarm correlation agent reads the alarms in the alarm repository*. (column 3, lines 36-40)

13. In regard to claims 8, 14, and 20, Whitney further disclosed *the alarm correlation agent is operative to issue one or more instructions to establish a desired state of the service when the current state is undesirable*. (column 7, lines 34-41)

Double Patenting

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,430,712. Although the conflicting claims are not identical, they are not patentably distinct from each other because the mechanisms are equivalent as shown below.

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Instant Application Claim 1	6,430,712 Claim 1
Multiple monitoring agents to each monitor a respective agent of operation of the network, wherein each monitoring agent detects one or more events relative to the respective aspect of operation and generates an alarm as a function of the one or more detected events; and	Receiving a first alarm associated with a first resource of the plurality of resources, the first resource being associated with a first domain; receiving a second alarm associated with a second resource of the plurality of resources, the second resource being associated with a second domain;
An alarm correlation agent that receives alarms from the monitoring agents, that determines a current state of the service based on alarms originating from the subset of the plurality of network components and,	Generating a third alarm based on the first and second alarms;
That issues one or more instructions to establish a desired state of the service when the current state of the service is undesirable.	Determining a corrective action based on the first and second alarms; and providing the corrective action to at least one of the plurality of resources.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason Cardone
Supervisory Patent Examiner
Art Unit 2145